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AUSTIN "JACK" DE COSTER

UNITED STATES DISTRICT COURT OF CALIFORNIA

EASTERN DISTRICT – SACRAMENTO DIVISION

NUCAL FOODS, INC., Plaintiff, vs. QUALITY EGG LLC; AUSTIN "JACK" DECOSTER; DECOSTER ENTERPRISES LLC; DECOSTER REVOCABLE TRUST; ENVIRON/WRIGHT COUNTY INC.; HILLANDALE FARMS OF PA, INC.; HILLANDALE IOWA LLC; and HILLANDALE FARMS OF IOWA, INC., Defendants.	Case No.: 2:10-CV-03105 KJM (CKD) **DECLARATION OF ASIM K. DESAI IN SUPPORT OF AUSTIN "JACK" DECOSTER'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION BY THE DISTRICT COURT OF MAGISTRATE JUDGE'S RULING GRANTING MOTIONS TO STAY; REQUEST FOR MONETARY SANCTIONS**

I, Asim K. Desai, hereby declare as follows:

1. I am an attorney at law licensed to practice before all of the Courts in the State of California and I am a partner with the law firm of Carlson, Calladine & Peterson LLP, attorneys for Defendant AUSTIN "JACK" DECOSTER ("Mr.

DeCoster"). This declaration is made in support of Mr. DeCoster's Opposition to Plaintiff's Motion for Reconsideration of the Magistrate Judge's Order granting a stay of discovery as to Mr. DeCoster. I am familiar with the facts of this case. I have personal knowledge of the facts set forth in this Declaration, and if called upon as a witness, I could and would testify competently thereto under oath.

2. On January 27, 2012, this Court granted Plaintiff NuCal Foods, Inc. ("NuCal") leave to amend the operative complaint, thereby adding additional parties, including Mr. DeCoster.

3. On March 15, 2012, I requested that NuCal agree to a stay of discovery and modification of the Pre-Trial Scheduling Order on account of an ongoing federal criminal investigation concerning Mr. DeCoster. On March 19, 2012, NuCal responded to my request by refusing to stay discovery. Accordingly, Mr. DeCoster was compelled to seek a protective order staying all discovery as to him for a period of six months in order to protect and preserve his Fifth Amendment privilege.

4. On April 27, 2012, Magistrate Judge Delaney granted Mr. DeCoster's motion for protective order, finding that a stay of discovery was warranted in light of the parallel criminal investigation. Thereafter, on May 2, 2012, Plaintiff filed the subject Motion for Reconsideration concerning Judge Delaney's Order.

5. On May 3, 2012, I wrote to Plaintiff's counsel requesting that the subject motion be withdrawn, and advising that Mr. DeCoster would seek monetary sanctions to the extent he was compelled to draft an opposition to same. Attached hereto as Exhibit "A" is a true and correct copy of my letter to Plaintiff's counsel.

6. On May 3, 2012, Plaintiff's counsel rejected my request that the motion be withdrawn. Attached hereto as Exhibit "B" is a true and correct copy of Plaintiff's counsel's May 3, 2012 email.

7. As set forth in Mr. DeCoster's Opposition papers, the Magistrate Judge made a decision Plaintiff did not agree with. In turn, Plaintiff filed a Motion for Reconsideration that fails to raise arguable issues, and merely rehashes facts and

evidence already considered by the Magistrate Judge. Plaintiff was afforded an opportunity to withdraw the motion, but has refused. Sanctions should be awarded as against Plaintiff and/or Plaintiff's counsel in the amount of Mr. DeCoster's costs in responding to Plaintiff's motion.

8. My associates and I have spent a total of 17 hours of associate and partner time meeting and conferring, researching and then drafting our client's Opposition to this meritless motion, resulting in fees totaling over $5000 which we respectfully request as sanctions to compensate our client and to hopefully deter future wasteful motion practice.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of May 2012, in Los Angeles, California.

/s/ Asim K. Desai
Asim K. Desai

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CERTIFICATE OF SERVICE

I certify that on May 9, 2012, I electronically transmitted the foregoing document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 9, 2012, at Los Angeles, California.

Monine Zerby

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